IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.595 OF 2004

Kerba Dnyanu Deokar & Ors. ... Appellants

V/s.

Shri Bapu Dhondi Deokar & Ors. ... Respondents

Mr.V.A. Gangal for Appellants
Mr.V.B. Rajure for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 5, 2004**

P.C.:

. This Appeal from Order has been filed against framing of certain issues by the Additional District Judge, Kolhapur. The trial Court had decreed the suit in favour of the Appellants, concluding that the sale deeds executed between the Respondents, inter se, are not binding on the appellants. Aggrieved by this judgement an appeal was preferred by the Respondents herein to the District Court. The Additional District Judge has framed additional issues 7A and 7B in respect of validity of the sale deeds and possession of the suit lands. According to the appellant, these issues cannot be framed as they cannot be decided by the District Court. According to Mr.Gangal, appearing for the appellant, the facts in this case are that the

appellants-plaintiffs were claiming the suit properties as tenants as they are cultivating the suit lands from the time of their forefathers. According to the appellants, the sale of the suit land by Respondent No.5 to Respondent Nos.1 to 3 for a consideration of Rs.10,500/- is illegal. It is contended by them that the suit land was also sold by Respondent No.5 to Respondent No.6 and therefore, the sale deeds are not binding on the Appellants. A declaration was sought from the trial Court to that effect by the Appellants and an injunction, restraining the respondents from interfereing with the possession of the appellants.

2. Several judgments have been cited by both the parties including that of the Full bench of this Court in *Rajaram T. Patel v/s. Mahipat M. Patel & Ors.,* **AIR 1967 BOM 408** and *Pradeeprao @ Virgonda Shivgonda Patil v/s. Sidappa Girappa Hemgire,* **2004(3) Mh.L.J. 75**. These judgments indicate that the question of tenancy is to be decided under the Bombay Tenancy & Agricultural Lands Act and the agreements regarding tenancy and the validity of those agreements can also be decided under that Act and the Civil Court has no jurisdiction. Mr.Gangal submits that the judgments in the case of *Rangnath Dashrath Vadar v/s. Bhagatsing Vithalsing Kotwal,* **2003(2) Mh.L.J. 381** clearly indicates that when the land is not regranted after resumption, the

provisions of the Bombay Tenancy Act, in particular, sections 32 to 32R are not applicable. He submits that in the present case, since there is no regrant, this judgment would cover the situation and the appellate Court was in error in remanding the matter for rehearing.

3. In my view, the Full Bench judgment of this Court in *Rajaram T. Patel* (supra) and *Dinkar Dada Mahadik v/s. Shrirany Dada Mahadik & Ors.*, **1992 (2) Mah. LR 86 (Bom)** are applicable to the fact situation in the present case. Whether the sale deeds in favour of the defendant Nos.1 to 3 are invalid is an issue which could be decided only under 84C of B.T. & A.L. Act. There is, therefore, no need to interfere with the impugned order.

4. Hence, Appeal from Order dismissed.

5. Status quo granted earlier to continue for eight weeks.